

Exhibit C

2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

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DAVID AGOADO, LEEANN MCNALLY, CRAIG MOORE,

5 CHRIS PIERRE, THOMAS SHARKEY, MADGE SHIPMAN,

and DOREEN VAZQUEZ individually and on behalf

6 of all others similarly situated,

7 Plaintiffs,

Index No.

8 14-cv-00018-LDW-ARL

9 -against-

10 MIDLAND FUNDING, LLC, MIDLAND FUNDING, LLC

DBA IN NEW YORK AS MIDLAND FUNDING OF

11 DELAWARE, LLC, and MIDLAND CREDIT

MANAGEMENT, INC., et. al.,

12

Defendants.

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15 EXAMINATION BEFORE TRIAL of the Defendant, SELIP &

16 STYLIANOU, LLP, by DAVID A. COHEN, taken by all

17 parties, pursuant to Order, held at the offices

18 of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER,

19 LLP, 666 Old Country Road, Garden City, New

20 York, on February 18, 2016, at 10:15 a.m.

21 before a Notary Public of the State of New

22 York.

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25

2 A P P E A R A N C E S:

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2 A P P E A R A N C E S: (Continued)

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2 S T I P U L A T I O N S

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4 IT IS HEREBY STIPULATED AND AGREED by and between

5 the attorneys for the respective parties

6 herein, that filing, sealing and certification,

7 and the same are, hereby waived.

8

9 IT IS FURTHER STIPULATED AND AGREED that all

10 objections except as to the form of the question, shall be

11 reserved to the time of the trial.

12

13 IT IS FURTHER STIPULATED AND AGREED that the within

14 deposition may be signed and sworn to by an officer

15 authorized to administer an oath, with the same force and

16 effect as if signed and sworn to before the Court.

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18

19 xxxxxx

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25

2 D A V I D A. C O H E N,

3 Having been first duly sworn before a Notary

4 Public of the State of New York, was examined

5 and testified as follows:

6 EXAMINATION BY

7 MR. SALTZMAN:

8 Q. Please state your name for the

9 record.

10 A. David A. Cohen.

11 Q. What is your address?

12 A. In care of Wilson Elser, 150 East

13 42nd Street, New York, New York.

14 Q. Good morning. My name is Jay

15 Saltzman and I represent the plaintiffs in

16 this class action. Just state your name for

17 the record please.

18 A. David A. Cohen.

19 Q. You understand the ground rules of

20 a deposition, you are an attorney; correct?

21 A. Yes.

22 Q. If you want to take any breaks, let

23 us know. Is there any reason that you can't

24 testify truthfully today?

25 A. No.

1 Cohen

2 Q. Are you on any medications that
3 would prevent you from testifying truthfully
4 today?

5 A. No.

6 Q. Please allow me to finish my
7 question, allow your counsel, if he is going
8 to object, allow him to object so that makes
9 it easier for the court reporter. Where did
10 you go to law school?

11 A. I went to Brooklyn Law School.

12 Q. How many years have you been
13 practicing?

14 A. 37 years.

15 Q. After graduating Brooklyn Law
16 School where did you work?

17 A. I worked at the firm of Stern and
18 Peshkin, P-E-S-H-K-I-N, PC.

19 Q. What kind of law did they practice?

20 A. Creditors' rights.

21 Q. How many years were you there?

22 A. Seven years.

23 Q. When you left there were you an
24 associate?

25 A. Yes.

1 Cohen

2 Q. Where did you go after that?

3 A. I went to the firm of Peshkin and
4 Cohen PC.

5 Q. Were you the "Cohen" of that firm?

6 A. Yes.

7 Q. So, you were a partner at that
8 firm?

9 A. Yes.

10 Q. Was it the same Peshkin as the
11 prior firm?

12 A. Yes.

13 Q. What kind of law did Peshkin and
14 Cohen practice?

15 A. Creditors' rights.

16 Q. When you say creditors' rights,
17 what do you mean by that exactly?

18 A. You would sue, commercial
19 litigation and consumer collections.

20 Q. How long were you at Peshkin and
21 Cohen?

22 A. Peshkin and Cohen became Taub,
23 Peshkin and Cohen and then it became Taub,
24 Peshkin, Cohen and Adler, and I was probably
25 there, I am trying to think, four years. It

1 Cohen

2 must have been four years or so of that.

3 Q. With all those changes it was four
4 years?

5 A. I am trying to get a time line.
6 Yes, about that, four or five years.

7 Q. So, they changed names pretty
8 rapidly within that time frame?

9 A. Yes.

10 Q. After Taub, Peshkin, Cohen and
11 Adler, what happened to you career-wise?

12 A. The firm of Taub, Peshkin, Cohen
13 and Adler PC merged with the law firm of
14 Arthur E. Upton PC and we became Upton, Cohen
15 and Slamowitz PC.

16 Q. Did that firm ultimately become
17 Cohen and Slamowitz?

18 A. Yes.

19 Q. About how many years after the
20 inception of Upton, Cohen and Slamowitz did
21 the firm change its name?

22 A. I have to think a minute. Maybe
23 ten years.

24 Q. The entire time the same general
25 practice, commercial litigation and consumer

1 Cohen

2 collection?

3 A. Yes. We also did mortgage
4 foreclosures for a period of time. We also
5 did mortgage closings representing banks,
6 credit, home equity loans, credit lines and
7 mortgages.

8 Q. More recently Cohen Slamowitz
9 became Selip and Stylianou; is that right?

10 A. That's correct.

11 Q. Was there any other firm between
12 Cohen and Slamowitz and Selip and Stylianou?

13 A. No.

14 Q. About when did the firm become
15 Selip and Stylianou?

16 A. I believe it was January 1st, 2015.

17 Q. And the same practice about, right?

18 A. Yes, essentially the same practice.

19 Q. What is your position now at Selip
20 and Stylianou?

21 A. I am a partner.

22 Q. What are your responsibilities?

23 A. I oversee the general operations of
24 the firm and you do everything you need to do
25 to run a law practice.

1 Cohen

2 Q. Do you get involved individually
3 with individual, with collection matters for
4 individual debtors at all?

5 A. Yes.

6 Q. What would that task include, when
7 you are involved with individual collection
8 matters, what is your job?

9 A. I get involved in many ways but I
10 think review of new claims that come in from
11 clients is an area I emphasize and doing suit
12 reviews, reviewing claims prior to filing
13 suit, reviewing claims prior to the entry of
14 judgment, approving them for judgment and I
15 assist in the post judgment collection
16 efforts.

17 Q. Other than those tasks that are
18 connected to individual claims, you said you
19 oversee general operation of the firm. What
20 does that include?

21 A. That would include dealing with
22 everything from HR issues to IT issues to
23 assisting the associate attorneys with
24 particular cases, to overseeing the
25 collections operations, to assisting in

1 Cohen

2 preparing, monitoring compliance in the
3 office, creating policies and procedures for
4 the office.

5 Q. You said creating policies and
6 procedures for the office. What does that
7 mean?

8 A. Well, if you have a particular
9 policy that you want your staff to comply
10 with, you create a procedure and you train
11 them and then you monitor their performance.

12 Q. Those policies and procedures, they
13 are internal to your firm?

14 A. Yes.

15 Q. Those policies and procedures, do
16 they ever have to comply with any of the
17 clients for whom you are doing collections?

18 MR. FRANCOEUR: Objection to form.

19 I think these questions are going beyond
20 the scope of the deposition.

21 MR. SALTZMAN: I am laying a
22 foundation for later questions which
23 will be specific.

24 MR. FRANCOEUR: Okay, but the
25 policies and procedures which Selip

1 Cohen

2 testified to, that deposition is
3 complete. I would give you a little bit
4 of leeway, but today is a three and a
5 half hour court-ordered deposition for
6 the attorney handling the Agoado file.

7 MR. SALTZMAN: You can answer.

8 THE WITNESS: I forgot the
9 question. I'm sorry.

10 Q. When you established these
11 procedures and policies for your firm, do
12 those ever have to comply with the policies
13 and procedures of your clients, for example,
14 on how to do collections or how to file a
15 lawsuit, having to do with those specific
16 debtors?

17 A. There are some client-specific
18 portions of our procedures and policies, if
19 that answers your question.

20 Q. It does. Thank you.

21 A. Okay.

22 Q. Did you do anything to prepare for
23 this deposition?

24 A. I spoke with my attorney.

25 Q. When was that?

1 Cohen

2 A. This week.

3 Q. More than once?

4 A. We had one discussion.

5 Q. For how long?

6 A. I believe it was an hour, an hour
7 and a half.

8 Q. Did you review any documents in
9 connection with preparation for this
10 deposition?

11 A. Yes.

12 Q. Do you remember what documents they
13 were?

14 A. I believe they were the documents
15 that had been the subject of discovery in
16 this action.

17 Q. Specific to any client, I'm sorry,
18 specific to any debtor?

19 A. The debtor that, I don't know how
20 you say the name.

21 Q. Agoado?

22 A. Agoado, yes.

23 Q. When you reviewed those documents,
24 did it refresh your recollection about
25 anything having to do with the Agoado

1 Cohen

2 collection procedures and any actions against
3 Mr. Agoado?

4 A. I think the answer would be yes.

5 Q. How was your recollection
6 refreshed?

7 MR. FRANCOEUR: Objection to form.

8 You can answer, if you can.

9 A. I don't know the process exactly
10 but it refreshed my recollection of a case
11 that I have no present recollection of.

12 Q. So, we will talk about that.

13 A. Okay.

14 Q. Did you discuss this deposition
15 with anyone other than your counsel?

16 A. I told my secretary I was going.

17 Q. That's it?

18 A. And my partners are aware of it.

19 MR. SALTZMAN: I would like to mark
20 the first exhibit. It is called MCM
21 Firm Manual.

22 (Whereupon, Cohen Exhibit 1
23 marked for identification.)

24 Q. Mr. Cohen, can you take a look
25 through that? Have you ever seen this

1 Cohen

2 document before?

3 A. I don't know.

4 Q. Can you take a look and tell me if
5 it looks familiar to you?

6 A. (Witness perusing document).

7 Q. Have you ever seen it before?

8 A. I have seen parts of it.

9 Q. What is this document?

10 A. It is the Midland Credit Management
11 Firm Manual.

12 Q. You have seen parts of it in what
13 context?

14 MR. FRANCOEUR: I am going to
15 object to the question. This is beyond
16 the scope of the deposition. It is
17 court ordered. I am about to instruct
18 my witness not to answer any questions
19 having to do with Midland's procedures,
20 policies and procedures. These were all
21 topics in the 30(B)6. They are beyond
22 the scope. This has nothing to do with
23 Agoado's file.

24 MR. SALTZMAN: It will, but also we
25 didn't have this for Mr. Selip's

1 Cohen

2 deposition.

3 MR. FRANCOEUR: So then you are
4 confirming my concern. I instruct the
5 witness not to answer any questions
6 about this manual. You could take it up
7 with the court.

8 MR. SALTZMAN: Okay.

9 MR. FRANCOEUR: If you have
10 questions regarding Mr. Agoado's account
11 and how Mr. Cohen handled that account,
12 that is why the witness is here, he is
13 available for three and a half hours,
14 this is not a back-door attempt for
15 another 30(B)6.

16 MR. SALTZMAN: No, and, like I
17 said, this is the basis for other
18 questions, but if you are going to
19 instruct him on the record not to
20 answer, that is fine with me.

21 MR. FRANCOEUR: Okay. If you have
22 a question about Agoado's account or
23 what Cohen did for that account, which
24 is the purpose, limited specifically by
25 Judge Tomlinson, the witness is ready,

1 Cohen

2 willing and available to answer those
3 questions.

4 MR. SALTZMAN: Okay.

5 Q. Aside from this, when you dealt
6 with Mr. Agoado's account, did you convey any
7 information about your collection procedures
8 for any court activity on behalf of your
9 client having to do with Mr. Agoado's account
10 to Midland?

11 A. I'm sorry. I don't understand the
12 question.

13 Q. When you were dealing with
14 Mr. Agoado's account, did you ever convey
15 information to Midland about that account?

16 A. Me, specifically?

17 Q. Your firm.

18 A. Possibly.

19 Q. Generally, when you need something,
20 let's say for Midland, for example, an
21 affidavit for default judgment, do you
22 request that from Midland?

23 A. I specifically probably don't
24 personally request it, but I am sure there is
25 a procedure in place, I am confident there is

1 Cohen

2 a procedure in place in my office that if
3 there is a summons served and there is a
4 default and pleading, a responsive pleading,
5 then you would have a procedure in place that
6 would request the client factual affidavit to
7 support the entry of judgment.

8 Q. Do you know the name of the system
9 that your firm interacts with to request
10 anything from Midland or to inform Midland
11 about the status of an account?

12 MR. FRANCOEUR: Objection to form.
13 This is beyond the scope, but you can
14 answer the question.

15 A. We use several different systems.
16 I think the codes that, we send a code, the
17 client sends a code back and I believe that
18 is a YGC operation.

19 Q. And was that used with your firm in
20 connection with Mr. Agoado's account?

21 A. As far as I know, it was.

22 Q. It was, okay, and when you do that,
23 when your firm does that, does your firm have
24 its own set of proprietary software that it
25 uses in order to keep track of what is going

1 Cohen

2 on with a particular debtor?

3 A. Yes.

4 Q. That information that you are
5 keeping track of in your own proprietary
6 system, does that information get transferred
7 or conveyed to Midland in connection with
8 Mr. Agoado or any other client, or any other
9 debtor?

10 A. I am not understanding your
11 question. Are you talking about content,
12 factual, discussions or something you had
13 with the debtor?

14 Q. Yes.

15 A. Or are you talking about a code
16 being passed?

17 Q. Both.

18 MR. FRANCOEUR: Let me object. The
19 question is appropriate with regard to
20 Mr. Agoado, but I going to object to the
21 extent that the question asked for
22 information regarding other debtors. To
23 the extent of Mr. Agoado, you may
24 answer.

25 MR. SALTZMAN: Okay.

1 Cohen

2 Q. So, in connection with Mr. Agoado,
3 did your firm convey information to Midland
4 via code?

5 A. I believe so.

6 Q. Did they convey information
7 regarding Mr. Agoado in any other way?

8 A. Possibly. I don't know.

9 Q. Mr. Agoado, his account, his
10 collection procedures, they are no different
11 than for any other client; right?

12 MR. FRANCOEUR: I object to form.

13 Q. I'm sorry, any other debtor, the
14 collection procedures for any other debtor?

15 A. They are different for different
16 clients, that was answered.

17 Q. But Mr. Agoado, for Mr. Agoado, was
18 it any different?

19 A. Again, I'm sorry, the question is
20 what?

21 Q. Do you know on whose behalf your
22 firm was collecting the debt, debts, that
23 Mr. Agoado owed?

24 A. Are you talking about Midland?

25 Q. I am asking was it Midland?

1 Cohen

2 A. Yes, it was Midland.

3 Q. Did your firm convey information to
4 Midland in connection with the debt
5 collection efforts having to do with
6 Mr. Agoado?

7 A. Yes.

8 Q. In sending that information to
9 Midland having to do with Mr. Agoado, did
10 C&S, when I say C&S, I mean Cohen and
11 Slamowitz, did C&S have to conform to
12 Midland's system requirements?

13 A. What system requirements? I'm
14 sorry.

15 Q. You testified that Midland, that
16 Cohen and Slamowitz had to conform to Midland
17 procedures to some extent; correct?

18 A. I said that our procedures were
19 client specific to some extent. I believe
20 that's what I said.

21 Q. And did that have to do with
22 Midland as well as other clients?

23 A. Yes.

24 Q. So, in conveying information about
25 Mr. Agoado, did your firm have to conform to

1 Cohen

2 Midland requirements?

3 MR. FRANCOEUR: Objection to form.

4 You can answer, if you can.

5 A. I believe so.

6 Q. Was that information that was sent,

7 was that sent in a standard format to

8 Midland --

9 MR. FRANCOEUR: Objection to form.

10 Q. -- by C&S?

11 A. Codes are passed through YGC.

12 Q. And that is a standard MCM format

13 as far as you know?

14 A. As far as I know.

15 MR. SALTZMAN: I would like to mark

16 as Cohen Exhibit 2 document Bates

17 stamped S&S 151 through S&S 160.

18 (Whereupon, Cohen Exhibit 2

19 marked for identification.)

20 Q. Have you ever seen this document

21 before, sir?

22 A. (Witness perusing document). I

23 don't know if I have seen this specific

24 document but I have seen the screens that I

25 think the print-out was made from.

1 Cohen

2 Q. What does this represent?

3 A. This is the paperless notes from
4 one of Mr. Agoado's accounts that was placed
5 with us by Midland for collection.

6 Q. This is internal to C&S?

7 A. Yes.

8 Q. Does any of this information get
9 sent to Midland at any point?

10 A. Well, again, if you enter a
11 particular code, then information is sent to
12 the client.

13 Q. Do you see the fourth column from
14 the left, it says code number?

15 A. Yes.

16 Q. Are those the codes you are talking
17 about if you enter a specific code?

18 A. I believe so.

19 Q. Do you know what any of those codes
20 mean, looking at these codes?

21 A. Frankly, when an attorney accesses
22 our system, it is much more user-friendly. I
23 just click a yes or a no or accept or put a
24 note in and the codes are done behind the
25 scenes.

1 Cohen

2 Q. So, from looking at this first
3 page, can you tell if any of this information
4 was sent to Midland?

5 A. I can't tell by the codes but let
6 me see, I see there was a request, I am
7 looking at about the sixth line down, the
8 last billing statement request, and that
9 would be a request, I assume, to the client.

10 Q. Do you see it says "rejected
11 cancel"?

12 A. Yes. I don't know. I do see that.
13 I am not sure what that means.

14 Q. You don't know what that means?

15 A. No.

16 Q. Are you the most knowledgeable
17 person about this account? I assume you are
18 the person who was put up for this deposition
19 because of that; is that right?

20 A. I don't know.

21 MR. FRANCOEUR: Who are you asking
22 the question?

23 MR. SALTZMAN: He is the most
24 knowledgeable person about this account,
25 right, that is why he is here?

1 Cohen

2 MR. FRANCOEUR: I am not under
3 oath. I don't know who you are
4 directing the question to.

5 Q. You don't know what that means;
6 correct?

7 A. I don't know what that specific
8 entry means. I don't know what action
9 triggered that comment being put there.

10 Q. Do you know, you don't know why it
11 says "request rejected, cancel"?

12 A. No.

13 Q. Do you know what it means when it
14 says "document type not available for
15 portfolio"?

16 A. No.

17 Q. Do you see a couple of lines above
18 that where it says CCR313 in the code
19 section?

20 A. Yes.

21 Q. Then it says next to that
22 "statement available", do you see that?

23 A. Yes.

24 Q. Do you know what that means,
25 "statement available"?

1 Cohen

2 A. No.

3 Q. You wouldn't know which statement
4 that is, looking at this document?

5 A. No.

6 Q. You wouldn't know how many
7 statements were available, looking at this
8 document?

9 A. No.

10 Q. You wouldn't know if it is the
11 first statement that Mr. Agoado had or his
12 last statement, you wouldn't know from
13 looking at this?

14 A. Not from looking at this.

15 Q. Is there any way I could find out?

16 A. You would have to see, it says
17 statement available, you would have to
18 request the statement, I gather, and then you
19 would get the document and you would take a
20 look at it.

21 Q. For me, if I wanted to know, there
22 is no way I could do that?

23 A. From looking at this page?

24 Q. Yes.

25 A. No.

1 Cohen

2 Q. Is there any way I could find that
3 out without looking at this page if I wanted
4 to know, other than what you just said?

5 MR. FRANCOEUR: Objection to form.

6 I don't understand the question. I
7 don't know how the witness could
8 possibly answer that question. Do you
9 understand that question?

10 THE WITNESS: No.

11 Q. If I wanted to know what that
12 statement was, is there any way, sitting here
13 is there any way for you to know what that
14 statement is at all?

15 MR. FRANCOEUR: I think he answered
16 the question.

17 A. I don't, no, I don't.

18 Q. If you went back to your office and
19 you wanted to know what this statement was,
20 could you find out?

21 MR. FRANCOEUR: Objection.

22 A. Probably.

23 Q. How would you do that?

24 A. I think we would run whatever
25 materials were run for the discovery and you

1 Cohen

2 would know what we know.

3 Q. Do you know what it means, the line
4 above that, "EDI free form text portfolio
5 1345", do you know what that means?

6 A. Not specifically.

7 Q. Do you know generally?

8 A. It refers to a portfolio and a
9 number. I believe that is the portfolio
10 number that this account was part of a
11 purchase by Midland and that would be the
12 portfolio number that this account
13 specifically was a part of, but I don't know
14 what the free form, I don't know what that
15 part means.

16 Q. Take a look at the next page, 152?

17 A. Okay. (Witness perusing document).

18 Q. About halfway down there is a code,
19 asterisk CC:R340, and to the right of that it
20 says, "Terms and conditions sample
21 available", do you see that?

22 A. Yes.

23 Q. Do you know what that code means?

24 A. No.

25 Q. Do you see where it says "Terms and

1 Cohen

2 conditions sample available", do you know
3 what that means?

4 A. It appears to mean that the terms
5 and conditions for the credit card agreement
6 I would assume for this account are
7 available.

8 Q. Do you know what "sample" means,
9 why it says "sample"?

10 A. I am not sure.

11 Q. Does it mean that it is not the
12 actual terms and conditions?

13 MR. FRANCOEUR: Objection.

14 A. I am not sure.

15 MR. FRANCOEUR: Please don't guess.
16 Tell him if you know.

17 THE WITNESS: I don't know.

18 Q. You don't know what "sample" means
19 in there?

20 A. I don't know.

21 Q. Do you know, does that appear to
22 you to be a communication from Midland to
23 C&S?

24 A. I don't know it, but it appears to
25 be.

1 Cohen

2 Q. So, any time that there is some
3 kind of a request by the firm to Midland,
4 Midland, does Midland send an indication that
5 that request has been fulfilled?

6 A. Again, I believe so. You know, you
7 are asking kind of technical questions. I
8 don't, you know, I am not all that familiar
9 with how the codes are sent and how the codes
10 are responded to, but I do know that if we,
11 you know, make an inquiry of the client, the
12 client responds to it. How exactly it is
13 done, I am not sure.

14 Q. This appears to be one of those
15 responses by the client; correct?

16 A. It appears to be.

17 MR. SALTZMAN: I would like to mark
18 as Exhibit 3 a document Bates stamped
19 MCM-0290 through 0297.

20 (Whereupon, Cohen Exhibit 3
21 marked for identification.)

22 Q. Sir, this was produced by Midland
23 so I am not sure if you have ever seen it
24 before, something like that, but can you tell
25 me if you have ever seen a print-out like

1 Cohen

2 this or screen like this before?

3 A. (Witness perusing document). I am
4 not sure.

5 Q. It doesn't, does it look familiar
6 to you?

7 A. No.

8 Q. If you take Exhibit 2, put that in
9 front of you for a moment and also Exhibit 3,
10 do you see in Exhibit 2, which is the S&S
11 document, do you see where it says paperless
12 page file number?

13 A. Yes.

14 Q. It says C499687; right?

15 A. Yes.

16 Q. Take a look at Exhibit 3, right
17 under where it says Midland Funding LLC
18 versus Agoado/David, do you see there is
19 something that says receiver file number?

20 A. Yes.

21 Q. Do you see the same number,
22 C499687?

23 A. Yes.

24 Q. Does that indicate to you that
25 these two documents are dealing with the same

1 Cohen

2 account?

3 MR. FRANCOEUR: Objection. I think
4 this calls for information that might be
5 beyond the witness' knowledge. If you
6 know that answer, tell him, but please
7 don't speculate or guess.

8 A. I don't know that for a fact.

9 Q. Does it appear to you to be, it is
10 the same number; right?

11 MR. FRANCOEUR: Same objection.

12 Q. It is the same number?

13 A. Yes.

14 Q. The Midland document, Cohen
15 Exhibit 3, says it is Midland versus
16 Agoado/David; correct?

17 A. Yes.

18 Q. Would that indicate to you that the
19 Cohen Exhibit 2 also is dealing with
20 Mr. Agoado?

21 A. Yes, this one I know is.

22 Q. For sure?

23 A. Yes, this one appears to be.

24 Q. On the Cohen Exhibit 2 in the first
25 line where it says code number CHRG OFF, do

1 Cohen

2 you see that?

3 A. Yes.

4 Q. Then it says next to it text

5 \$7,985.20?

6 A. Yes.

7 Q. Do you know where that number came

8 from?

9 A. That number could have come from
10 Midland.

11 Q. In what form would that number have
12 come from Midland?

13 A. I don't know. Electronic form, I
14 assume.

15 Q. You wouldn't know if it was in the
16 form of just some kind of file or bill, you
17 don't know that?

18 A. I wouldn't know.

19 Q. Take a look at page S&S 154 of
20 Cohen Exhibit 2?

21 A. Okay.

22 Q. Take a look at about a little more
23 than halfway down in the code column there is
24 something that says "SAFA", and to the right
25 "request for affidavit"?

1 Cohen

2 A. Yes.

3 Q. Do you know what "SAFA" means?

4 A. No.

5 Q. Do you know what "request for
6 affidavit" means in this document?

7 A. It is a request for an affidavit
8 from the client.

9 Q. What kind of affidavit?

10 A. I am not sure.

11 Q. Take a look at the bottom of the
12 same page, the last line. It says "Judgment
13 sent to court per NTRAINA"?

14 A. Um-hum.

15 Q. Do you know what NTRAINA means?

16 A. No.

17 Q. Do you see on the left in the code
18 column, SJTOCT, do you know what that means?

19 A. It appears to be a code indicating
20 that a judgment was sent to court.

21 Q. Does that give you any indication
22 about what the request for affidavit is that
23 happened on 6-29-12?

24 MR. FRANCOEUR: Please don't
25 speculate.

1 Cohen

2 A. I would be speculating. I don't
3 know.

4 Q. You can't say from looking at this
5 document without speculating, you can't
6 figure that out?

7 MR. FRANCOEUR: Objection to form.

8 A. Are you asking me if I know it or
9 are you --

10 Q. I am asking from looking at this
11 document can you tell.

12 A. I can't tell. They could have sent
13 different kinds of affidavits. I am not
14 sure.

15 Q. What kind of affidavits could they
16 send?

17 A. Could be an affidavit of fact,
18 could be an affidavit for summary judgment,
19 could be, I don't know, different kinds of
20 affidavits, affidavit of good standing. I
21 don't know.

22 Q. If you look above the last line,
23 four above it says, it says "default judgment
24 per EDI4", do you see that?

25 A. EDI14?

1 Cohen

2 Q. Yes.

3 A. Yes.

4 Q. Do you know what EDI14 means?

5 A. It is an electronic data interface
6 entry. I think it is the system making, you
7 know, somebody hit a code and a note is
8 dropping into the file.

9 Q. Electronic interface?

10 A. I believe it is electronic data
11 EDI, interface. This is EDI4, you are right,
12 electronic data interface. I'm sorry. I
13 believe that is something internal to the
14 office entering a note. It is coming from
15 the system as opposed to a person entering a
16 note. The system is notating an event.

17 Q. And looking at default judgment per
18 EDI4, does that also, does that give you any
19 clarity on what the request for affidavit is
20 above there?

21 A. It gives me an indicator of what it
22 probably is but I still don't know.

23 Q. What does it indicate to you what
24 it probably is?

25 A. It is probably an affidavit of fact

1 Cohen
2 to be used in support of an entry of
3 judgment, but again it is kind of
4 speculating.

5 Q. So, an affidavit of a fact to be
6 used in support of a default judgment, that
7 affidavit that was used in Mr. Agoado's case,
8 is that a standard affidavit that the firm
9 uses and they used in this case?

10 MR. FRANCOEUR: Objection to the
11 form. The witness has testified three
12 times in a row he does not know
13 specifically what that affidavit was.
14 So now you are asking him detailed
15 questions about an affidavit the witness
16 said he doesn't know what that affidavit
17 was.

18 MR. SALTZMAN: He said probably,
19 you can read it back, he said it
20 probably is based on looking at this
21 document that has to do with Mr. Agoado.

22 MR. FRANCOEUR: You could read it
23 back all you want. He said in his very
24 last answer, "but I would only be
25 speculating". So, with that in mind, I

1 Cohen

2 ask you to rephrase your question.

3 MR. SALTZMAN: We will read it
4 back.

5 (Whereupon, the reporter read
6 back as requested.)

7 Q. It is kind of speculating, but it
8 probably is that; right?

9 MR. FRANCOEUR: Objection to form.
10 If you know the answer, you may answer
11 the question.

12 A. I don't want to say it was and then
13 find out it was not, so I think it is but I
14 am not sure. I don't know.

15 Q. But you think it is, based on
16 looking at this document that has to do with
17 Mr. Agoado?

18 MR. FRANCOEUR: Objection. He said
19 he doesn't know. The question is asked
20 and answered already. If you have the
21 affidavit, show him, he can talk about
22 it.

23 Q. Do you know an affidavit for
24 Mr. Agoado, what information would be filled
25 in for that affidavit by your firm?

1 Cohen

2 MR. FRANCOEUR: Objection to form.

3 Do you know which affidavit he is
4 referring to? If you don't understand
5 the question, you need to say something.
6 I can't follow it.

7 A. (No verbal response).

8 Q. Take a look at page S&S 153 of
9 Cohen Exhibit 2?

10 A. Okay.

11 Q. Do you see towards the end there is
12 an entry in the code number column S, or is
13 that 5? S3RDAUTH, do you see that?

14 A. Yes.

15 Q. And then right below that there is
16 a code SFAXRECD; do you see that?

17 A. Yes.

18 Q. Do you know what that code is?

19 A. I don't know specifically what the
20 code is.

21 Q. Do you know generally what the code
22 is?

23 A. I am speculating as to what the
24 code is based upon the data, you know, the
25 entry, the words.

1 Cohen

2 Q. The entry is, "Fax received from
3 CSR, addressed to CarolynF, with third-party
4 authorization, states does not recognize
5 debt, sister is willing to give him a little
6 bit of money to settle this and X-Ref
7 account, has SS statements per: PAVLIDESD".
8 Do you know what PAVLIDESD means?

9 A. Yes.

10 Q. What is that?

11 A. That is a note that was put in by a
12 Denise Pavlides. The last name is spelled
13 P-A-V-L-I-D-E-S, first name Denise. She was
14 formerly our compliance attorney manager.

15 Q. What is her position now with the
16 firm?

17 A. She is no longer with the firm.

18 Q. Do you see where it says what we
19 just read, "States does not recognize debt"?

20 A. Yes.

21 Q. Do you have any understanding of
22 what that means?

23 A. I believe she is putting in a note
24 stating that, I don't know, from consumer, so
25 it appears the consumer is stating it does

1 Cohen

2 not recognize the debt.

3 MR. SALTZMAN: Let's mark as Cohen

4 Exhibit 4 document Bates stamped S&S 133

5 through S&S 135.

6 (Whereupon, Cohen Exhibit 4

7 marked for identification.)

8 MR. SALTZMAN: The court reporter

9 has requested we take a break. Take a

10 look at that and when we come back I

11 will ask you about that.

12 THE WITNESS: Okay.

13 (Whereupon, a brief recess was

14 taken at this time. Time noted

15 11:00-11:15).

16 Q. Mr. Cohen, back on the record,

17 going back to Cohen Exhibit 2 for a moment

18 and the text where it says "statement

19 available", we discussed that briefly. Do

20 you know what "available" means in that

21 context?

22 A. Not specifically.

23 Q. Do you know generally what it means

24 when a document is available?

25 MR. FRANCOEUR: Objection to form.

1 Cohen

2 A. I assume it means it is available.

3 If you need it, we have it.

4 Q. Is that what it meant in this
5 context?

6 A. I don't know.

7 Q. You don't know what it means?

8 A. I don't know what it means.

9 Q. Just to be clear, where it says
10 "statement available" in connection with
11 Mr. Agoado's account, you don't know what
12 "statement available" means?

13 A. No.

14 Q. You don't?

15 A. No.

16 Q. Being as you don't know what
17 "statement available" means, do you have any
18 recollection of looking at a statement on or
19 about 11-27-2011 in connection with
20 Mr. Agoado's, this is the Chase account?

21 MR. FRANCOEUR: Objection to form.

22 A. I don't have any present
23 recollection of looking at it then.

24 Q. Do you have any recollection at
25 all?

1 Cohen

2 A. I have refreshed my recollection.

3 Q. When did you refresh your
4 recollection?

5 A. This week.

6 Q. How was your recollection
7 refreshed?

8 A. I looked at the notes and I looked
9 at the exhibits that were tendered with the
10 discovery demands.

11 Q. Did that refresh your recollection
12 that you actually did look at a statement on
13 or about 11-27-2011?

14 MR. FRANCOEUR: Objection to form.

15 A. I believe so.

16 Q. Do you remember what that statement
17 was that you looked at on or about 11-27-2011
18 in connection with Mr. Agoado?

19 MR. FRANCOEUR: Objection. Correct
20 me if I am wrong, I don't believe he
21 said he reviewed, he knows what the
22 statement was. I thought he said his
23 recollection was generally refreshed.
24 If I am wrong, then put it in your
25 words.

1 Cohen

2 THE WITNESS: Exactly right, it was
3 generally refreshed.

4 Q. What was generally refreshed, that
5 you looked at something?

6 A. (No verbal response).

7 Q. What was generally refreshed? You
8 said your recollection was generally
9 refreshed. What do you mean?

10 A. If I may?

11 Q. Sure.

12 A. I looked at the account in 2011, I
13 have looked at a lot of accounts before 2011,
14 I have looked at a lot of accounts after
15 2011. I don't have a specific recollection
16 of looking at this account. I have refreshed
17 my recollection of this account by looking at
18 my notes, the file notes available to me, and
19 by the documentation that has been provided
20 to you in the discovery.

21 Q. You don't remember what statement
22 you looked at on or about that date,
23 11-27-2011?

24 A. Only from my refreshed
25 recollection.

1 Cohen

2 Q. So, do you have any recollection or
3 not, sitting here right now?

4 MR. FRANCOEUR: Objection to form.

5 Q. Yes or no?

6 MR. FRANCOEUR: If you show him the
7 document what statement you are
8 referring to.

9 MR. SALTZMAN: I am asking him
10 about this document.

11 MR. FRANCOEUR: He answered that
12 question three times. You don't have to
13 answer it again. Ask another question,
14 counsel.

15 Q. Yes or no, do you have any
16 recollection of what the statement you looked
17 at was, sitting here now?

18 A. Yes.

19 Q. What was that statement that you
20 looked at sitting here now?

21 A. Part of the documentation that you
22 provided, that was provided to you, rather,
23 in the discovery.

24 Q. Okay, it was provided to us, but
25 you don't remember which one?

1 Cohen

2 A. I don't understand the question.

3 Q. All right, we will move on. Let's
4 look at Cohen Exhibit 4. Have you ever seen
5 this document before today?

6 A. Yes.

7 Q. When did you last see it?

8 A. Earlier this week.

9 Q. Did you see it any time before
10 earlier this week?

11 A. Possibly.

12 Q. Might you have seen it on or about
13 5-22-12?

14 A. Possibly.

15 Q. Who is Carolyn Ford?

16 A. Carolyn Ford is an employee in my
17 office.

18 Q. What is her position?

19 A. I believe she is a collector.

20 Q. She is not an attorney?

21 A. No.

22 Q. Take a look at page 135, S&S 135.

23 It appears to be a handwritten note; correct?

24 A. Yes. That's what appears to be.

25 Q. Do you see where it says, second

1 Cohen

2 paragraph, "I don't even have recollection of
3 these bills", do you see that?

4 A. Yes.

5 Q. Does that reflect to your review
6 right now that Mr. Agoado or somebody on his
7 behalf didn't know the indebtedness?

8 MR. FRANCOEUR: Objection to form.

9 A. He said he had no recollection. He
10 didn't say they weren't his bills.

11 Q. But he has no recollection of these
12 bills; correct?

13 A. I don't know what he has a
14 recollection of or what he does not have a
15 recollection of. I know what the note says.

16 Q. By "note", what do you mean?

17 A. I mean the note, the document you
18 have in front of me, 135, S&S 135.

19 Q. A document like this, is this
20 something that would be received by S&S in
21 the regular course of its business?

22 MR. FRANCOEUR: Objection.

23 A. Pretty much.

24 MR. SALTZMAN: We will mark as

25 Cohen Exhibit 5 document Bates stamped

1 Cohen

2 S&S 138 through S&S 149.

3 (Whereupon, Cohen Exhibit 5
4 marked for identification.)

5 Q. Have you ever seen this document
6 before, sir?

7 A. (Witness perusing document). Yes,
8 I believe so.

9 Q. When did you see this last?

10 A. Probably earlier this week.

11 Q. Have you ever seen it before
12 earlier this week at any time?

13 A. Probably in 2011 or so.

14 Q. What is this document?

15 A. This is the paperless notes page
16 from our computer system as regards
17 Mr. Agoado's case with us, number 499583.

18 Q. Take a look, the fourth line down
19 from the top where it says "text", do you see
20 where it says "EDI" --

21 A. Yes.

22 Q. --"Free form text chain of title
23 affidavit available", do you see that?

24 A. Yes.

25 Q. What does that mean?

1 Cohen

2 A. To the extent I believe it means
3 that a chain of title affidavit was available
4 for this particular account between, you
5 know, this particular Midland account with
6 this debtor.

7 Q. Did you look at that on or about
8 11-27-2011?

9 A. I don't recall. I would assume so
10 but I don't have a present recollection of
11 it.

12 Q. When you looked at it, how did you
13 look at it?

14 A. I looked at it on a computer
15 screen.

16 Q. When you looked at it on the
17 computer screen, how did you actually access
18 the document from the computer?

19 A. It probably was a scanned item and
20 if you click on the document on the screen,
21 it opens up and you can see it, like a PDF.

22 Q. When you do that, it is within the
23 C&S computer system?

24 A. Yes.

25 Q. Does it access anything, any MCM

1 Cohen

2 computer system, when you try to look at that
3 document?

4 A. I am not sure how it works. I
5 believe we download them or it is somehow
6 electronically sent to us, but I am not sure.
7 I don't know if I am looking at some portals.
8 I am not sure. It just opens instantaneously
9 to my viewing.

10 Q. When you request it?

11 A. When you click on it, that's how
12 you call up the document and I assume it is a
13 PDF that I am looking at, but I am not sure
14 how it got there.

15 Q. When you get the notification that
16 this chain of title affidavit is available,
17 do you log in to Mr. Agoado's account and
18 then you see the status of it or do you get
19 an alert noting that this document is
20 available?

21 A. I am not sure. I am not
22 understanding.

23 Q. How do you know that this chain of
24 title affidavit is available?

25 A. It says it is available.

1 Cohen

2 Q. But I am saying physically when you
3 come in in the morning, how do you find that
4 out, do you get a ping or something, how does
5 that happen?

6 A. No. When I open this account to
7 review it, to either accept it or do a suit
8 review, there are documents, a media that has
9 been provided on the file and we can click on
10 the media entry and it shows you whatever is
11 there.

12 Q. And when you say media, do you mean
13 documentation?

14 A. That would include, yes,
15 documentation.

16 Q. Is that only account level
17 documentation or any documentation?

18 MR. FRANCOEUR: Objection to form.

19 A. It depends on the particular
20 account. There may be a mixture. I don't
21 know.

22 Q. When you say media, do you mean any
23 documents?

24 A. Media would include affidavits from
25 the client, media would include a debt

1 Cohen

2 validation letter that my firm sent, media
3 would include a credit bureau report, media
4 would include pleadings, when and if you do
5 the pleadings, copy of the summons and
6 complaint, media would include the affidavit
7 of service filed with the court, media could
8 include a copy of a judgment entered by the
9 court, media could include all of those
10 things in addition to things like statements
11 or an application or things of that nature.

12 Q. Further down, if you look a little
13 more than halfway down where it says "claim
14 accepted by David C", does that mean you?

15 A. Yes. The one from 11-30, that is
16 me.

17 Q. What does it mean when it says
18 "claim accepted"?

19 A. "Claim accepted" means that I have
20 clicked off on my screen after reviewing the
21 account, whatever particular information our
22 clients provided to us, whatever
23 documentation is available to us and
24 indicated that there is a sufficient basis
25 that we can proceed with the claim for

1 Cohen

2 collection activity.

3 Q. Looking at this document, what
4 documentation was available prior to you
5 hitting "claim accepted"?

6 A. On this particular account?

7 Q. Yes, and on this page.

8 MR. FRANCOEUR: Hold on. The
9 question is from this page can you tell
10 what documentation was available from
11 the client, is that the question?

12 MR. SALTZMAN: It is a little
13 different, from this page what
14 documentation is available.

15 MR. FRANCOEUR: Is the question
16 what documentation is available?

17 MR. SALTZMAN: Yes.

18 MR. FRANCOEUR: Having nothing to
19 do with this page?

20 MR. SALTZMAN: No, from this page,
21 I am basing the question on this page.

22 MR. FRANCOEUR: I don't understand
23 the question. Do you understand the
24 question?

25 A. I can't tell from this page what

1 Cohen

2 documents I looked at.

3 Q. You can't tell?

4 A. No.

5 Q. Can you tell what was available
6 from looking at this page?

7 A. No.

8 Q. Why not?

9 A. It doesn't reflect the documents.
10 This is not the document media portion of the
11 file.

12 Q. So, there is a separate portion of
13 the file that would indicate the
14 documentation that is available for this
15 account?

16 A. Media scanned items are stored
17 separately.

18 Q. And when something becomes
19 available, how do you know that for this
20 account?

21 A. I would know it when I review the
22 account.

23 Q. And that would be something other
24 than what is printed here?

25 MR. FRANCOEUR: Objection. You

1 Cohen

2 could answer.

3 A. What is printed here are file
4 notes. I believe media is stored separately
5 in a media folder, if you will, electronic
6 media folder.

7 MR. SALTZMAN: Mark this as Cohen
8 Exhibit 6. It is Bates stamped MCM 1213
9 through MCM 1222.

10 (Whereupon, Cohen Exhibit 6
11 marked for identification.)

12 Q. This is an MCM document having to
13 do with Mr. Agoado's account, also the
14 Household account. Take a look at the second
15 page of this document, MCM-1214. Do you see
16 on the top to the right where it says "media
17 available" and there is an "N", do you know
18 what that means?

19 A. No.

20 Q. No idea, you have no idea what that
21 means?

22 A. I don't specifically know what it
23 means.

24 Q. Do you know generally what it
25 means?

1 Cohen

2 A. I don't specifically or generally
3 know what it means. I see it as an "N".

4 Q. You have no understanding?

5 A. Not really.

6 Q. Go back to Cohen Exhibit 5, if you
7 will, page S&S 142.

8 A. Okay.

9 Q. If you look, the third line from
10 the top, it says "affidavit received", do you
11 see that?

12 A. Yes.

13 Q. Below that, a few lines below that,
14 off 7-24-12 it says "default judgment per
15 EDI4" --

16 A. Yes.

17 Q. -- as we saw before; correct?

18 A. Yes.

19 Q. Does that give you any
20 understanding of what the affidavit that was
21 sent to your firm on or about 7-18-12 was?

22 MR. FRANCOEUR: Objection to form.

23 A. Again, I would be speculating. I
24 would guess that it was an affidavit, a fact
25 from the client to be used in support of the

1 Cohen

2 preparation and submission of the judgment
3 upon default, but again, I am not sure of
4 that, I believe that but I am not sure.

5 MR. SALTZMAN: Let's mark as Cohen
6 Exhibit 7 document Bates S&S 108 through
7 117.

8 (Whereupon, Cohen Exhibit 7
9 marked for identification.)

10 Q. Have you ever seen this before,
11 sir?

12 A. Yes, I believe I have.

13 Q. Have you seen it other than this
14 week?

15 A. I may have seen it back in 2011 or
16 '12.

17 Q. What is this document?

18 A. The first page is the default
19 judgment that was submitted to the court in
20 connection with the action of Midland against
21 Agoado, our file number C499583. The next
22 page is the attorney's affirmation signed by
23 myself in support of the entry of judgment.
24 The next document is a status report given to
25 us by the Department of Defense Manpower Data

1 Cohen

2 Center which basically certifies that the
3 subject debtor, David Agoado, is not on
4 active duty status with the military as of
5 July 24, 2012. The last few pages of this
6 exhibit are the affidavit from Midland. This
7 would be the affidavit of facts given to us
8 in support of our application for the default
9 judgment, and this was signed by a Miss Haag,
10 H-A-A-G, she was a legal specialist at
11 Midland Funding LLC, and signed and
12 notarized, and it comes with the certificate
13 of conformity which is the last page from a
14 local attorney in Minnesota which is where
15 the client's affidavit was subscribed and
16 notarized.

17 Q. Would this appear to be the
18 affidavit that is discussed at S&S 142 in the
19 first line?

20 A. First line?

21 Q. Of S&S 142, Exhibit 5?

22 A. I'm sorry. Go back to that --

23 MR. FRANCOEUR: If you know.

24 A. -- are you saying the affidavit
25 received would be Miss Haag's affidavit?

1 Cohen

2 Q. Correct.

3 A. I would assume so. I don't know
4 that to be the case, but I believe so.

5 Q. You believe so?

6 A. Yes.

7 Q. Thank you. To your knowledge for
8 Mr. Agoado did your firm provide this
9 affidavit to Miss Haag or somebody at Midland
10 for their signature?

11 A. I don't know who prepared it. I
12 would assume that, you know, we told the
13 clients what the requirements are for the
14 entry of judgment in New York State. They
15 relied on our expertise for the local law, if
16 you will, of the state. I don't believe we
17 drafted the affidavit. I think the client
18 drafted it with our input.

19 Q. Did the client also insert, if you
20 look at paragraph 4 on page 115, S&S 115, did
21 the client insert those numbers?

22 A. I am not sure.

23 Q. Typically, does the client insert
24 the numbers, typically does Midland insert
25 the numbers, let's say the numbers in

1 Cohen

2 paragraph 4, does Midland typically insert
3 those or is that provided by your firm to
4 Midland?

5 A. I am not sure.

6 Q. You don't know at all?

7 A. I am not sure.

8 Q. Have you ever been involved in
9 drafting any of these, an affidavit like this
10 one to Mr. Agoado?

11 A. Like this?

12 MR. FRANCOEUR: Objection to form.
13 There are two affidavits here.

14 Q. The affidavit of Kayla Haag, have
15 you ever been involved in drafting an
16 affidavit like this one, this affidavit of
17 Kayla Haag, for your firm?

18 MR. FRANCOEUR: Objection. I am
19 directing the witness not to answer. It
20 is outside of the scope. He is not here
21 to talk about policies and procedures
22 and what Midland does. He is here to
23 talk about what he did in the Agoado
24 case. If you have questions, he is
25 ready, willing and able to talk about

1 Cohen

2 this affidavit from Kayla Haag which is
3 S&S 115. Thank you.

4 Q. Do you remember anything, do you
5 remember doing anything having to do with
6 this affidavit, 114 to 115, of Kayla Haag, do
7 you remember anything?

8 MR. FRANCOEUR: Objection to form.

9 A. I don't have a specific
10 recollection at this time, no.

11 Q. When you say specific recollection,
12 I am going to ask you do you have any
13 recollection, I understand you don't have a
14 specific recollection, do you have any
15 recollection?

16 MR. FRANCOEUR: Objection to form.

17 A. We need to have an affidavit from
18 the client in order to enter a judgment in
19 every case.

20 Q. Okay?

21 A. I probably review it whenever I do
22 a judgment, you know, proposed application
23 for the entry of a default judgment. So, I
24 would routinely look at them. I don't recall
25 drafting them. I don't recall discussing

1 Cohen

2 them with a client. I don't recall anything
3 particularly about this affidavit other than
4 it was used in the application for the
5 default judgment entry.

6 MR. SALTZMAN: Read back the
7 answer.

8 (Whereupon, the reporter read
9 back as requested.)

10 Q. When you reviewed, you said you
11 typically review these affidavits, what do
12 you review?

13 A. Make sure that they are signed,
14 make sure that they are notarized, make sure
15 they are dated, make sure that there is a
16 certificate of conformity so the court will
17 accept it, probably check to see that the
18 numbers are correct and the debtor's name is
19 correct.

20 Q. When you check to see that the
21 numbers are correct, what do you look at?

22 A. I would be looking at the document
23 on my screen which would be the top exhibit
24 here, default judgment. I probably compare
25 the numbers here to the numbers in the

1 Cohen

2 affidavit.

3 Q. So, would you physically have a
4 piece of paper in front of you and look at a
5 screen?

6 A. No. You review it all at one time.
7 I would open up this document. I would make
8 sure this was the number. I go to the next
9 document and make sure the numbers were the
10 same, really make sure that you are not using
11 an affidavit from a different file
12 inadvertently.

13 Q. You, yourself, you said you review
14 it but do you fill in any numbers? I am
15 talking about you, do you fill in any numbers
16 or do you send the information to Midland or
17 you just review it?

18 MR. FRANCOEUR: Your question
19 relates to the Kayla Haag affidavit?

20 MR. SALTZMAN: He testified what he
21 usually does. He testified to what he
22 usually does.

23 MR. FRANCOEUR: I know, but there
24 are several documents in this exhibit.
25 Which document, specifically Kayla Haag?

1 Cohen

2 MR. SALTZMAN: Yes.

3 A. I'm sorry. The question is?

4 Q. The question is did you provide any
5 of these numbers to, such as in paragraph 4,
6 to Midland?

7 A. I don't believe so. Me
8 specifically, I don't believe so.

9 Q. What about anybody in your firm
10 that reports to you that might have worked on
11 this affidavit?

12 A. The firm might have set something
13 up that would indicate that interest accrued
14 at 9 percent, which is the legal rate in New
15 York, I don't know if Midland would know
16 that, so we might have had some discussion
17 with them or their general counsel's office
18 or whatever to make sure they were using the
19 proper prejudgment interest rate, legal rate
20 of interest in New York State, but the other
21 numbers I don't believe so.

22 Q. You don't believe that your firm
23 sends it to Midland?

24 A. I don't believe, I think the
25 9 percent we set up with Midland. The other

1 Cohen

2 numbers I believe would be supplied by
3 Midland.

4 Q. Take a look at the first page of
5 Cohen Exhibit 7?

6 A. Yes.

7 Q. Do you know how this page is
8 created?

9 A. We create it at Cohen and
10 Slamowitz.

11 Q. For example, the amount claimed in
12 the complaint, \$11,428.90, where does that
13 come from?

14 A. That would be the number that was
15 provided to us by the client that is in the
16 client's affidavit, confirmed in the client's
17 affidavit, and that we are going to advise
18 the court that is the amount that is due.

19 Q. And somebody at your firm inputs
20 these numbers into this form?

21 A. Well, you get numbers for an
22 account, my understanding, you get the
23 particular fields of data for an account and
24 those fields of data can be drawn upon for
25 this document, the same fields of data can be

1 Cohen

2 drawn upon for this document, so you may
3 enter them once and then use them in ten
4 different documents in ten different places,
5 so.

6 Q. And somebody does that on the
7 computer?

8 A. Either some person does or there is
9 some automated process that does, I am not
10 sure.

11 Q. You are not sure?

12 A. No.

13 MR. SALTZMAN: I would like to mark
14 as Exhibit 8, Cohen Exhibit 8, document
15 Bates S&S 0096 through 97.

16 (Whereupon, Cohen Exhibit 8
17 marked for identification.)

18 Q. Have you ever seen this document
19 before, sir?

20 A. (Witness perusing document). I may
21 have seen it this week.

22 Q. What is this document?

23 A. Document is entitled Affidavit of
24 Sale of Individual Account.

25 Q. What does that mean?

1 Cohen

2 A. Account level specific affidavit
3 that a particular account, in this case for
4 David Agoado, account number, I don't know,
5 some number assigned there, the last four
6 letters are 8468 and 5291, it has a balance
7 of \$11,428.90, was sold by Household Finance
8 Corporation 3, identified as HSBC, to
9 Midland.

10 Q. Take a look at the date of this
11 affidavit. Do you see that date?

12 A. Yes.

13 Q. It is June 4, 2014. Do you see
14 that?

15 A. Yes.

16 Q. Do you have any understanding of
17 why that is dated June 4, 2014?

18 A. No.

19 Q. It is after the commencement of
20 this action that we are talking about today;
21 right?

22 A. I believe so.

23 MR. SALTZMAN: I would like to next
24 mark, this was produced this morning,
25 S&S 005971 through 5972, mark that as

1 Cohen

2 Exhibit 9.

3 (Whereupon, Cohen Exhibit 9
4 marked for identification.)

5 Q. What is this document, Mr. Cohen?

6 A. (Witness perusing document). This
7 is an affidavit, looks like an affidavit of
8 sale of an individual account, in this case
9 it is the Agoado account that was Chase in
10 origin, and this is an affidavit of sale from
11 Chase to Midland Funding LLC.

12 Q. If you look here, if you look on
13 the first page, this was sworn to on June 25,
14 2014, do you see that, by Cherise Phillips?

15 A. Yes.

16 Q. Do you have any understanding why
17 this is sworn to on June 25, 2014?

18 A. No.

19 Q. You do understand this is also
20 after the date of the commencement of this
21 lawsuit?

22 A. Yes.

23 Q. Is there any way you could tell
24 when this document was first found in C&S's
25 files?

1 Cohen

2 MR. FRANCOEUR: Objection to the
3 form. Do you understand the question?

4 THE WITNESS: Not exactly.

5 MR. SALTZMAN: Let me rephrase it.

6 Q. If I wanted to know when this
7 document first appeared in your firm's files,
8 could I do that?

9 A. I believe so.

10 Q. How?

11 A. I think usually when the document
12 is appended to a file, or a PDF of a document
13 is appended to a file, there is a date when
14 it is being added to the file.

15 Q. Would that be found in a document
16 like Cohen 5, or would that be in some other
17 kind of document?

18 A. Which one is Cohen 5? This again
19 is the paperless note page. It is not a list
20 of media or scanned items.

21 Q. So, it would be found in a --

22 A. Different folder in the same file,
23 yes.

24 Q. It would indicate when particular
25 documents became available?

1 Cohen

2 A. It would indicate the day it was
3 scanned to the file.

4 MR. SALTZMAN: Let's take a break,
5 a couple minutes.

6 (Whereupon, a brief recess was
7 taken at this time.)

8 (Time noted 11:50-12:00)

9 MR. SALTZMAN: We have no further
10 questions, but I would like to put on
11 the record I understand your position is
12 that we can't ask any questions or you
13 won't allow your client to answer any
14 questions having to do with the manual.
15 Our position is that we can and should
16 be able to ask him questions about the
17 manual. We want to preserve that right.

18 The fact that I have limited my
19 questions to the beginning is no waiver
20 of our position that we can and if we go
21 to the judge and the judge allows it, we
22 will ask questions to either Mr. Cohen
23 or someone else at your firm, at your
24 client's firm, about the MCM Manual. We
25 have no further questions.

1 Cohen

2 MR. FRANCOEUR: I would like to
3 make a statement as well. If you leave,
4 it is absolutely a waiver. I do invite
5 you to contact Judge Tomlinson now. The
6 witness is here and available. He will
7 not be made available again. I believe
8 her ruling was quite clear that this
9 deposition was limited for the attorney
10 handling the account and the 30(B)6
11 questions and witness have been closed.
12 You haven't made any representation or
13 showing of how a question on the manual
14 would relate to the handling of the
15 Agoado account. If you can do that, the
16 witness would answer them, but I suggest
17 that if you want to preserve your right
18 you need to call the judge while we are
19 here. You still have an hour 45 minutes
20 for the deposition. I am sure the judge
21 is in.

22 MR. SALTZMAN: I am not calling the
23 judge and I am not waiving my rights.

24 MR. FRANCOEUR: You have waived
25 them.

1 Cohen

2 MR. SALTZMAN: Well, we are not and
3 I am stating for the record, your
4 opinion what I did is not relevant to
5 me. It might be relevant to the judge
6 at some point but it certainly --

7 MR. FRANCOEUR: Well, can you give
8 a basis for the record why you won't
9 call the judge now? I mean is it just
10 revving up the expense for my client to
11 have him come twice?

12 MR. SALTZMAN: No.

13 MR. FRANCOEUR: Well, why wouldn't
14 you call the judge now? We are all
15 here. We have four parties on the line.
16 You are going to have this issue with
17 four other defendants. Why not just
18 address it with the court right now?

19 MR. SALTZMAN: All right, call the
20 judge.

21 (Whereupon, discussion held
22 telephonically with Erin Kandel,
23 law clerk for Judge Tomlinson).

24 MS. KANDEL: Let's take this down.
25 Has the witness been asked to be

1 Cohen

2 excused?

3 MR. FRANCOEUR: The witness may be
4 excused. I could have him step out.

5 MS. KANDEL: Yes. That is our
6 usual procedure, if we could do that
7 please.

8 (Whereupon, witness excused).

9 MS. KANDEL: Before we get into the
10 nitty-gritty of the dispute, I should
11 tell you that Judge Tomlinson is out
12 today and she will not be in today or
13 for the rest of this week, out on a
14 personal matter. So, with that in mind
15 I would ask, I mean it sounds like you
16 have some fundamental disagreement as to
17 the scope of the deposition or what not,
18 but if this is something that you could
19 get past and move forward, that would be
20 ideal because Judge Tomlinson is not
21 here to hear your dispute. I mean I can
22 try and find another magistrate judge to
23 review the issue but that will take
24 sometime and will depend on the schedule
25 of the other magistrates that are in the

1 Cohen

2 courthouse today. So, I will lay that
3 out there and you could tell me what
4 this is about or consider whether you
5 want to go forward or try to have a
6 judge here to speak to today.

7 MR. FRANCOEUR: I mean I could tell
8 you just very briefly, it is a class
9 action arising in an FD CPA context. My
10 client, Cohen and Slamowitz, produced --

11 MS. KANDEL: Who is speaking right
12 now?

13 MR. FRANCOEUR: This is Joseph
14 Francoeur for Cohen and Slamowitz, now
15 known as Selip and Stylianou. So, Cohen
16 and Slamowitz produced a 30(B)6 witness.
17 After that the plaintiffs made a
18 specific application to the court for a
19 fact witness separate from the 30(B)6
20 for the attorney who actually handled
21 the specific debtor's account. That
22 deposition is happening today, but the
23 court was very clear, Judge Tomlinson
24 limited the deposition to three and a
25 half hours and it was limited to items

1 Cohen
2 relating to the handling of the account
3 only. I don't believe counsel takes
4 issue with that. I think the
5 disagreement is more specific in that he
6 wants to go into policies and procedures
7 of my client's client, Midland, in
8 getting into matters of the firm manual
9 and procedures in general, not specific
10 to Agoado's account, but I won't speak
11 for the plaintiff.

12 MR. SALTZMAN: This is Jay Saltzman
13 on behalf of the plaintiffs. The reason
14 we need to talk about or ask about the
15 manual is that it is basic to the
16 procedures of how the company, the
17 defendant law firm, handled this
18 particular account, because they had to
19 follow the procedures of their client,
20 Midland. At a minimum it is important
21 as a foundation for the other questions
22 which we have already completed.

23 MS. KANDEL: Okay, again, Judge
24 Tomlinson is not here to rule on this
25 dispute. I feel like this is something

1 Cohen

2 that if there are objections and it can
3 be marked for a ruling and the judge can
4 rule it at a later date and that the
5 deposition needs to be reopened or
6 questions need to be addressed that
7 aren't addressed today because she
8 wasn't able to rule on the dispute, it
9 will be taken up at another time. Do
10 you folks agree with that or is this
11 something I need to call back after I
12 canvass the courthouse to see if a judge
13 who isn't familiar with this matter can
14 hear your dispute?

15 MR. SALTZMAN: This is Jay Saltzman
16 for plaintiffs. I am okay with I can
17 ask my questions and we can mark it for
18 dispute at a later date, I am okay with
19 that.

20 MS. KANDEL: Okay, and how about
21 Mr. Francoeur?

22 MR. FRANCOEUR: Well, I don't
23 believe I am okay with that. I think
24 once the cat is out of the bag, you
25 can't put it back in the bag. I think

1 Cohen

2 what I am going to do is talk to my
3 client, see what his preferences are in
4 how to proceed. We may just have to
5 deal with the judge. I don't think, and
6 I appreciate your offer, it was so
7 specific, the judge's rulings, I don't
8 believe going to another judge is going
9 to work. I think we have to go before
10 Judge Tomlinson, but I will have a
11 conversation with my client to see if he
12 is willing to answer these questions,
13 but it is my position that anything on
14 policy and procedure was for 30(B)6 and
15 is outside the scope and I need to
16 preserve that.

17 MS. KANDEL: Okay. Just to be
18 abundantly clear, you believe that Judge
19 Tomlinson needs to hear the dispute and
20 that cannot happen today.

21 MR. FRANCOEUR: Yes, no, I mean I
22 think counsel agrees with that, yes.

23 MR. SALTZMAN: Yes.

24 MR. FRANCOEUR: Plaintiff agrees,
25 another judge isn't going to be able to

1 Cohen

2 address the issue.

3 MR. SALTZMAN: I agree with that.

4 MR. FRANCOEUR: So, I think really
5 the only thing is I will talk to my
6 client, see if there is a way for us to
7 answer the questions preserving our
8 rights, but if we are not comfortable, I
9 may direct him not to answer and we will
10 just have to take it up with the court
11 at a later time.

12 MR. SALTZMAN: I am okay with that.

13 MR. FRANCOEUR: The plaintiff is
14 okay with that.

15 MS. KANDEL: Okay.

16 MR. FRANCOEUR: Alright. Thank you
17 for your time.

18 MS. KANDEL: Okay, no problem.

19 MR. SALTZMAN: Let's go off the
20 record.

21 (Whereupon, discussion held off
22 the record.)

23 MR. FRANCOEUR: Counsel, as you
24 know, we had a call with the court.
25 Judge Tomlinson is not available and

1 Cohen

2 while you represented to me that you
3 think your questioning would be brief in
4 these other areas, I believe that the
5 court limitation on this deposition was
6 quite clear, the witness was not to talk
7 about policies and procedures and issues
8 for a 30(B)6 witness but this was
9 supposed to be limited in scope to the
10 attorney handling the Agoado file.

11 Mr. Cohen is here. He is ready to
12 answer any questions regarding Agoado,
13 even communications with Midland, which
14 he has already testified to, but to go
15 into areas outside of that, such as
16 Midland's policies and procedures and
17 what happens generally and not related
18 to Mr. Agoado, we cannot agree to. So,
19 we are going to hold our objection and
20 if you want to pursue that with the
21 court later, you could do so.

22 MR. SALTZMAN: Okay. We are going
23 to reserve our right. We are not
24 waiving, as you know.

25 MR. FRANCOEUR: You called the

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2 court, I agree.

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MR. SALTZMAN: And we called the
court, we tried to resolve it, we are
not able to resolve it today. If we
need to resolve it at a later date, then
we shall.

MR. FRANCOEUR: Okay.

MR. SALTZMAN: Thank you,
Mr. Cohen.

(Time noted: 12:20 p.m.)

DAVID A. COHEN

Subscribed and Sworn to before me
this day of 2016.

Notary Public

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C E R T I F I C A T E

I, ELLORI EISEMAN, hereby certify that the examination of said witness named in the foregoing transcript was held before me at the time and place herein named; that said witness was duly sworn before the commencement of the testimony; that the testimony was taken stenographically by myself and then transcribed under my direction; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the examination of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of February, 2016.



ELLORI EISEMAN

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